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Office-Supreme Court, U.S.
FILED
OCT 30 1959
JAMES R. BROWNING, Clerk

No. 469

In the Supreme Court of the United States

OCTOBER TERM, 1959

CITY OF MURFREESBORO, TENNESSEE, PETITIONER

v.

RUTHERFORD COUNTY, TENNESSEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

MEMORANDUM FOR THE TENNESSEE VALLEY AUTHORITY AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
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General Counsel,
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Knoxville, Tennessee.

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The Tennessee Valley Authority takes no position as to whether the writ should be granted. However, the case does turn on the meaning of certain provisions of Section 13 of the Tennessee Valley Authority Act of 1933, as amended, the administration and interpretation of which are entrusted by Congress to the Board of Directors of the Tennessee Valley Authority. These provisions of Section 13 have had a long history of interpretation by TVA, and it is appropriate that the Court should be advised of this interpretation.

The statutory provision involved is as follows:

> Nothing herein shall be construed to limit the authority of the Corporation in its contracts

> for the sale of power to municipalities, to permit or provide for the resale of power at rates which may include an amount to cover tax-equivalent payments to the municipality in lieu of State, county, and municipal taxes upon any distribution, system or property owned by the municipality, or any agency thereof, conditioned upon a proper distribution by the municipality of any amounts collected by it in lieu of State or county taxes upon any such distribution system or property; it being the intention of Congress that either the municipality or the State in which the municipality is situated shall provide for the proper distribution to the State and county of any portion of tax equivalent so collected by the municipality in lieu of State or county taxes upon any such distribution system or property.

The Tennessee Supreme Court construes this provision as requiring all municipalities contracting with TVA to pay over to the respective counties all tax equivalents collected by the city in lieu of county taxes and as precluding TVA from entering into a contract permitting any other arrangements. This interpretation is contrary to that placed on the Act by TVA. In TVA's view, this provision simply (1) makes clear that Section 13 was not intended by Congress to limit the authority conferred on TVA by Section 10 of the Act "to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act," and (2) reaffirms the authority of TVA

to condition the resale rates fixed by it upon a proper distribution by the municipality of any amounts collected in lieu of state or county taxes. Section 13, as reenacted in 1940, provides for tax-equivalent payments by TVA itself to states and counties, but not to municipalities. The legislative history of Section 13 is rather sketchy but Congress apparently intended in the portion of the section quoted above to make clear that the more favored treatment given to counties in respect to TVA tax-equivalent payments was not intended to deprive TVA of the authority to require a proper distribution by municipalities of amounts collected by them in lieu of state or county taxes as a condition of permitting them to charge resale rates sufficiently high to make such distribtuion feasible. Nothing in the Act defines what constitutes a proper distribution or makes it mandatory that rates be conditioned upon any particular form of distribution.

The language beginning "it being the intention of Congress" (*supra*, p. 2) has been consistently construed by TVA as expressing the hope of Congress that either the municipality or the state in which the municipality is situated will provide for the proper distribution of tax equivalents collected in lieu of county taxes, but as recognizing that the proper distribution of tax equivalents is a complex one involving various and sometimes conflicting equities which is appropriately left for solution to the legislatures of the states concerned or, in the absence of state legislative action, to the municipalities themselves. Consistently with this interpretation, TVA has en-

couraged the municipalities to make some distribution of tax equivalents but has never undertaken to make this mandatory or to prescribe a rigid formula for such distribution.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES J. MCCARTHY,
General Counsel,
Tennessee Valley Authority.

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U. S. GOVERNMENT PRINTING OFFICE 1959 52492 92

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THE CITY OF MURFREESBORO, TENNESSEE,
Petitioner,

v.

RUTHERFORD COUNTY, TENNESSEE,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee.

BRIEF FOR RESPONDENT IN OPPOSITION.

GRANVILLE S. RIDLEY,
GRANVILLE S. RIDLEY BOULDIN,
Murfreesboro, Tennessee,
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November . , 1959.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.